IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

MACA.No. 198 of 2003()

OPMV.814/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/1ST RESPONDENT:

V.P. RAMESH BABU, S/O. V.M. PRABHAKARAN,
RESIDING AT VALATH HOUSE,
THRITHALLOOR POST, THRISSUR DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.R.RAJA RAJA VARMA
SMT.M.R.VALSA
SRI.SREEKANTH.K.R

RESPONDENTS: PETITIONER/2ND RESPONDENT:
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1. KRISHNANKUTTY. K., S/O. V. GOVINDAN NAIR
RESIDING AT KANDATHILAKAYIL HOUSE,
ENGANDIYOOR P.O., THRISSUR.

2. MANAGER, THE ORIENTAL INSURANCE
COMPANY LIMITED, THIRUVAMBADY DEVASWOM
BUILDINGS, ROUND WEST, THRISSUR.

BY ADV. SRI.R.KRISHNA RAJ
SMT.G.PRATHISHYA
SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 198 OF 2003

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Dated this the 11th day of July, 2007

J U D G M E N T

First respondent in O.P(MV) No.814 of 1996 on the file of the Motor Accidents Claims Tribunal, Thrissur is the appellant. Appeal is filed against the award passed by the Tribunal allowing the Insurer to recover the amount of 42,000/- from the appellant after paying the same to the claimant.

2. Petitioner-first respondent filed O.P(MV) No.814 of 1996 alleging that at about 12 noon on 16.5.1996 while he was travelling in a Car bearing Reg. No.KL-8/D-5344 owned and driven by the appellant, the same met with an accident and he sustained injuries. Petitioner filed the O.P. claiming compensation impleading the appellant and Insurer.

3. Appellant filed a written statement denying his liability. He has also disputed the quantum of compensation claimed. Insurer filed a written statement contending that even if the claimant is entitled to get any compensation, the Insurer was not liable to pay the same in view of the agreement entered into between the appellant and the

Insurer.

4. Tribunal found that the accident occurred due to the negligence of the appellant and petitioner is entitled to get a sum of Rs.42,000/- as compensation. Tribunal also directed the Insurer to pay the amount awarded to the claimant and allowed it to recover the same from the appellant in execution of the award itself. Challenging that part of the award, this appeal is filed.

5. The fact that accident took place on 16.5.1996 and first respondent sustained injuries in that accident are not in dispute. It is also not disputed that first respondent was travelling in the Car belonging to the appellant. So the accident occurred due to the negligence of the appellant is also not disputed. I have gone through the quantum of compensation awarded. I find no reason to interfere with the same also. Evidence adduced in this case shows that the claimant was working as a staff nurse in Riyad and was earning 1600 Riyals per month. So the compensation awarded by the Tribunal is also reasonable. The only question arising for consideration is whether the finding of the Tribunal directing the Insurer to pay the compensation awarded and

then to recover the same from the appellant by executing the award itself is correct.

6. Exhibit B8 policy produced in this case shows that the vehicle was covered with a valid policy of insurance regarding the damages to the vehicle as well as third parties. Policy covers compensation payable on account of the death or injury of the passengers in the Car also. So it is a comprehensive policy covering all aspects. Vehicle was driven by a person having a valid licence. Insurer denies its liability solely on the ground of Exhibits B5 and B7. Exhibit B5 is the Claim Form submitted by the appellant. In column No.1 of the Claim Form, which deals with injuries to third parties, the appellant had written 'No'. He also executed a Exhibit B7 Notarised Affidavit for receiving the compensation awarded by the Insurer for the damages sustained to the vehicle. It was not at all necessary to execute such an affidavit for receiving that amount. Insurer was liable to pay the damages to the vehicle. Still in Exhibit B7 appellant had affirmed that in the accident no third party death or injury caused. Further he had affirmed in the affidavit that if any claim is made by any third party, he will be responsible for the said claim and he will not

make any further claim against the company. According to the Insurer the appellant suppressed material facts even in the Claim Form and told the Company that no persons sustained injuries in the accident and the vehicle alone sustained damages.

7. Learned counsel appearing for the appellant has argued that the liability of the Insurer is under the provisions of the Motor Vehicles Act and parties cannot contract out of the statutory liability under the Statute.

8. I do not think it necessary to consider all these aspects in this appeal. Going by the case of the second respondent it would appear that the definite stand taken by the Company is that the appellant played fraud by filing an affidavit for damages only making the company believe that no personal claim for injuries will be filed. There is no violation of statutory conditions. Policy was also produced. It covers injuries of passengers and it is a comprehensive policy. So under the provisions of the Motor Vehicles Act, the Insurer cannot recover the amount from the appellant. If at all the Insurer has a case that the appellant received some amount by playing fraud, it may have a right to recover that amount by

filing a suit. Learned counsel for the appellant submitted that the agreement is void and it is unenforceable. That is also not a matter to be considered at this stage. So without prejudice to the right of the Insurer to pursue its remedies under Exhibit B7 subject to the law of limitation the award passed by the Tribunal by which the Insurer was allowed to recover the amount from the appellant is to be set aside.

9. In the result, the appeal is allowed in part. That part of the award passed by the Tribunal by which it gave permission to the Insurer to recover the amount awarded from the appellant is hereby set aside. In all other respects the award passed by the Tribunal is confirmed.

Interlocutory Application No.700 of 2003 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 198 OF 2003

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J U D G M E N T

11TH JULY, 2007